85-1376

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985.

GLASGOW, INC.,

Petitioner,

v.

STEPHEN S. NOETZEL and
MARILYN B. NOETZEL, his wife,

Respondents.

PETITIONER FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF PENNSYLVANIA.

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Philadelphia, Pennsylvania 19103,
Attorney for petitioner.

55P

QUESTIONS PRESENTED.

1. Did the Pennsylvania courts err in concluding that they were powerless to protect a Pennsylvania corporation against invasion of fundamental federal due process rights by the manipulation of procedural rules in West Virginia?

2. Did the Pennsylvania courts err in holding that principles of res judicata barred the Pennsylvania corporation from attacking the violation of procedural due process that occurred in West Virginia?

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TO THE SUPREME COURT OF PENNSYLVANIA.

Glasgow, Inc.* petitions for a writ of certiorari to review a judgment of the Supreme Court of Pennsylvania.

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* Glasgow, Inc. has no parent company or subsidiaries (other than wholly-owned subsidiaries). It has three affiliates: Blue Mountain Construction Company; Gill Quarries, Inc.; and Glasgow Hauling, Inc.

OPINIONS BELOW.

The opinion of the Court of Common Pleas of Montgomery County, Pennsylvania (A1-A6) is reported at 111 Montgomery County Law Reporter 185 (1982). The opinion of the Superior Court of Pennsylvania (A7-A33) is reported at 338 Pa. Super. 458, 487 A.2d 1372 (1985). The action of the Supreme Court of Pennsylvania (A-34), taken without opinion, is not reported.

JURISDICTION.

The order of the Supreme Court of Pennsylvania denying Glasgow's petition for allowance of appeal from the Superior Court of Pennsylvania was dated November 18, 1985 and was entered November 21, 1985.

Glasgow invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED.

Section 1 of the fourteenth amendment to the United States Constitution provides in pertinent part as follows:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law...."

STATEMENT OF THE CASE.

This case involves outrageous conduct by a West Virginia lawyer who manipulated that state's procedural rules so as to deny a Pennsylvania defendant any opportunity to defend against a meritless personal-injury claim on which the West Virginia lawyer obtained a default judgment for $300,000. The courts in Pennsylvania have, in effect, sanctioned this outrageous conduct by ruling that they were powerless to look behind the West Virginia default judgment to the federal due process violation through which the judgment was obtained and enforced.

The Pennsylvania courts so ruled in refusing relief to petitioner, Glasgow, Inc., from a judgment lodged against Glasgow in the Court of Common Pleas of Montgomery County, Pennsylvania

under the Pennsylvania Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S. § 4306. The judgment had been obtained by default in West Virginia in the absence of actual notice to Glasgow. Glasgow sought relief from the judgment on the ground that it had been obtained in violation of due process and was therefore not entitled to full faith and credit in Pennsylvania.

The facts of this case are extraordinary. The judgment lodged in Pennsylvania had been obtained by respondents, Stephen S. Noetzel and Marilyn B. Noetzel, his wife, in an action commenced in the Circuit Court of Kanawha County, West Virginia, on June 13, 1979. In that action the Noetzels sought damages for injuries they allegedly suffered in an automobile accident near a West Virginia

job site where Glasgow, a Pennsylvania road-construction contractor, was working on an interstate highway. According to the West Virginia State Police accident report, the accident occurred at approximately 3:49 A.M. on the morning of Sunday, March 11, 1979, during a heavy snowstorm. Stephen Noetzel, who had been drinking and was driving at an unsafe speed through the snowstorm, misjudged a turn and drove his car off the road and over an embankment. His wife was a passenger in the car.

Although substituted service of the complaint in the Noetzels' action was technically effected on Glasgow in West Virginia, Glasgow did not receive actual notice of the complaint and therefore filed no answer. On August 13, 1979, without notice to Glasgow, the Noetzels' lawyer entered a default judgment in

their favor against Glasgow for an unliquidated amount. On March 19, 1980, again without notice to Glasgow, he certified to the court that the action should be listed for a jury trial on the issue of damages. Still without notice to Glasgow, he then took the depositions of two physicians, which constituted the major evidence at an ex parte trial on June 24, 1980. At the trial, of which Glasgow had no notice, the jury assessed damages against Glasgow in a total amount of $300,000, the exact amount sought in the Noetzels' complaint. The court awarded judgment to the Noetzels against Glasgow for $300,000 on June 25, 1980, once more without notice to Glasgow. The failure to give any notice to Glasgow was permitted by the West Virginia Rules of Civil Procedure.

Rule 60(b) of the West Virginia Rules of Civil Procedure provides:

> "On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment...for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; (2) newly discovered evidence...; (3) fraud...; (4) the judgment is void; (5) the judgment has been satisfied [etc.]; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), (3), and (6) not more than eight months after the judgment... was entered...."

Recognizing the absolute bar imposed by Rule 60(b) against opening a default judgment on the ground of mistake after eight months have elapsed, the Noetzels' lawyer deliberately did not take any steps to execute on the Noetzels'

judgment against Glasgow until that eight-month period had run. Two days later, on February 27, 1981, the Noetzels issued a writ of execution to attach payments due Glasgow from the West Virginia Department of Highways. A representative of the West Virginia Department of Highways then advised Glasgow of the attachment. This was Glasgow's first actual notice not only of the outstanding judgment against it but of the action itself.

Glasgow immediately moved to set aside the judgment and to enjoin any payments by the West Virginia Department of Highways to the Noetzels. By order dated April 9, 1981, the Circuit Court of Kanawha County denied Glasgow's motion on the ground that the eight-month time limit for setting aside a default judgment under the West Virginia Rules of Civil Procedure

had expired. The West Virginia Supreme Court of Appeals, the highest court in the state, subsequently denied Glasgow's petition for a writ of prohibition to prevent further execution on the default judgment. Glasgow's attempt to obtain relief in the United States District Court for the Southern District of West Virginia was also unsuccessful.

As a result of the West Virginia courts' refusal to grant Glasgow any relief, the Noetzels were able to proceed with attachment of payments due Glasgow from the West Virginia Department of Highways. By that device, they recovered $218,811.54 in partial satisfaction of their $300,000 judgment.

On December 22, 1981, the Noetzels took judgment against Glasgow

in the Court of Common Pleas of Montgomery County, Pennsylvania pursuant to the Pennsylvania Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S. § 4306. Glasgow petitioned to set aside that judgment on the ground that the West Virginia judgment was not entitled to full faith and credit because the Noetzels' actions in obtaining and enforcing their default judgment without actual notice to Glasgow had violated Glasgow's rights under the fourteenth amendment to the Constitution of the United States (Defendant's Petition to Strike etc., ¶ 13, filed January 26, 1982).

The court of common pleas denied the petition to open the judgment. The court relied on nothing more than the simple fact that Glasgow had been properly served with the complaint according to the

West Virginia procedures for substituted service. The court ignored the fact that there had never been actual notice and that the Noetzels' attorney, realizing that Glasgow did not know of the commencement of the action, deliberately manipulated the West Virginia procedures to deprive Glasgow of any opportunity, within the time allowed by the West Virginia Rules of Civil Procedure, to have the judgment opened so that Glasgow could defend the case on its merits.

Glasgow appealed the order of the court of common pleas to the Superior Court of Pennsylvania. The statement of questions involved in Glasgow's brief as appellant in that court (p. 2) expressly raised the issue of due process under the fourteenth amendment to the United States Constitution. Glasgow argued that the

court of common pleas had erred in granting full faith and credit to a judgment obtained and enforced in violation of fundamental principles of procedural due process. The Superior Court held that the determination of the West Virginia courts was res judicata with respect to the validity of the judgment entered in the Circuit Court of Kanawha County. The court ignored the fact that the Noetzels' lawyer had concealed the existence of the judgments by deliberately withholding any effort to enforce them until after expiration of the eight-month limitation on seeking relief from a judgment on the ground of mistake.

Glasgow petitioned the Supreme Court of Pennsylvania to allow an appeal from the Superior Court's decision. Glasgow's petition (pp. 2, 9) expressly raised

the federal constitutional issue. The Supreme Court denied the petition.

REASONS FOR GRANTING THE WRIT.

The Pennsylvania courts have sanctioned and enforced a manifest injustice perpetrated on a Pennsylvania corporation by the courts of West Virginia. They have not approved of the result but have in effect proclaimed their impotence to alter it.

Although the facts of this case are unique, the principle at stake is an important one that involves fundamental due process rights. The Pennsylvania courts have disclaimed their power and responsibility to protect the federal due process rights of their citizens when a deprivation of those rights occurs at the hands of a court in another jurisdiction.

Now only this Court can afford Glasgow relief in this case and, in doing so, provide guidance to the lower courts on the scope of these due process rights.

The decision of the Superior Court of Pennsylvania produces a result that is inconsistent with numerous decisions by this Court defining the scope of procedural due process. This Court has defined the components of procedural due process to include (1) reasonable notice and reasonable opportunity to be heard; and (2) notice that creates an awareness in the defendant that its interests are to be adjudicated and allows the opportunity to present answers and objections. Leis v. Flynt, 439 U.S. 438 (1979); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306

(1950). See also Restatement (Second) of Conflict of Laws § 25 (1979).

The Superior Court of Pennsylvania chose to ignore the vice of what occurred in West Virginia on the stated ground that principles of res judicata bar Glasgow from asserting that what occurred was a violation of procedural due process. In doing so, that court missed the point that Glasgow should not be precluded from relying on the constitutional infirmity in the West Virginia courts' allowing the Noetzels deliberately to conceal their default judgment for eight months and then invoke the eight-month time limit against Glasgow's claim of mistake that resulted in its failure to appear and defend. The West Virginia courts' refusal to allow Glasgow to make that claim had not occurred when

Glasgow asked for relief on the ground of mistake, and the federal due process question was, therefore, neither presented nor decided in West Virginia.

The same fallacious reasoning led the Superior Court to assert that Glasgow could have raised its procedural due process claim in West Virginia because the eight-month limit in the West Virginia rules does not apply to a judgment that is void for lack of due process (A20). But the judgment was not void on the state of the record as it was when Glasgow learned of the judgment's existence. Glasgow's ground for seeking relief from the judgment was the mistake that had resulted in Glasgow's failure to appear and defend. It was the West Virginia courts' refusal to allow Glasgow to raise the claim of mistake after the

Noetzels' lawyer had concealed the existence of the judgment for eight months that violated Glasgow's right to due process.

In looking at mere technical compliance with procedural rules and failing to focus on the gross injustice perpetrated by the manipulation of those rules under the circumstances of this case, the Pennsylvania courts ignored the principles established by this Court. Glasgow seeks review by this Court of state action that undermines fundamental rights guaranteed by the Constitution of the United States.

Respectfully submitted,

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February 18, 1986.

A P P E N D I X

THE COURT OF COMMON PLEAS OPINION.

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA

STEPHEN S. NOETZEL and MARILYN B. NOETZEL, h/w	:	NO. 81-22360
VS.	:	
GLASGOW, INC.	:	FOREIGN JUDGMENT

O P I N I O N

[Entered September 7, 1982]

LOWE, P. J., September 3, 1982

Defendant Glasgow, Incorporated is a Pennsylvania corporation licensed to do business in West Virginia. On June 13, 1979 the plaintiffs, residents of West Virginia, commenced personal injury litigation against the defendant in their home state.

Pursuant to the West Virginia Rules of Civil Procedure,[1] a summons and complaint were served upon the West Virginia Secretary of State. He, in turn, forwarded to the defendant a copy of the Complaint and set forth the time in which to file an Answer or appearance.

Defendant, through inadvertence, failed to file an Answer or enter an appearance. Subsequently, a default judgment on the issue of liability was entered on August 13, 1979. The issue of damages was reserved, and a jury trial convened June 25, 1980. The jury awarded damages in the amounts of One Hundred Thousand ($100,000) Dollars to Stephen S. Noetzel, and Two Hundred Thousand ($200,000) Dollars to Marilyn B. Noetzel.

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1. West Virginia Code 31-1-15.

On February 27, 1981 plaintiffs commenced execution proceedings against defendant in West Virginia. The plaintiffs, having recovered approximately $218,000 of their $300,000 awards, filed the judgment in Montgomery County pursuant to the Pennsylvania Uniform Enforcement of Foreign Judgments Act[2] seeking satisfaction.

Glasgow, Inc. then filed in this Court a Petition to Strike and/or Open and/or Vacate the West Virginia judgments. That Petition was denied by the undersigned on August 11, 1982. The defendant has appealed, thus necessitating this Opinion.

Defendant contends the West Virginia judgment is not entitled to full faith and credit because there exists a

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2. 42. Pa. C.S.A. 4306.

lack of due process in that state's courts. Specifically, the defendant alleges that because there are no provisions for notice of intention to take a default judgment following the service of the Complaint, the West Virginia Rules of Civil Procedure are unconstitutional.

Due process is governed by the Fourteenth Amendment to the United States Constitution and, inter alia, mandates a reasonable method of notifying defendants of proceedings against them. A judgment rendered without meeting this requirement is void, both under constitutional law and the Pennsylvania Uniform Enforcement of Foreign Judgments Act. Sniadach vs. Family Finance Corporation, 395 U.S. 337 (1969), Everson vs. Everson, 264 Pa. Superior Ct. 563 (1979).

The level of procedural due process that is minimally required is 1) reasonable notice and reasonable opportunity to be heard; 2) notice that creates an awareness in the defendant that its interests are to be adjudicated and allows the opportunity to present answers and objections. See Leis vs. Flynn, 439 U.S. 438 (1979); Sniadach vs. Family Finance Corporation, supra; Mullane vs. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), Restatement (Second) of Conflict of Laws, § 25, Comment 6 (1971). Some states may impose more demanding requirements in this regard, as does Pennsylvania, but the fact that West Virginia is not so stringent is not fatal to the judgment.

There can be no dispute that the defendant was properly served with the

Complaint. The defendant acknowledges that it did not plead or otherwise defend in a timely manner. Thus, it was as a result of the defendant's omissions that a default judgment was entered. Therefore, the defendant's contention that it was not afforded a constitutionally sufficient notice is erroneous. Procedural due process is a concept which protects basic rights. Clearly, that was done in the instant case. Due process does not create new rights and will not serve to elevate defendant's omissions into a constitutionally protected sphere.

Therefore, upon consideration of the record and the briefs and arguments of counsel, the Order of August 11, 1982 should be affirmed.

BY THE COURT:

/s/ Richard S. Lowe
P. J.

THE SUPERIOR COURT OPINION.

STEPHEN S. NOETZEL and MARILYN B. NOETZEL, his wife,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellees	:	
vs.	:	
GLASGOW, INC.,	:	
Appellant	:	No. 2421 Philadelphia, 1982

Appeal from Order of the Court of Common Pleas, Civil Division, of Montgomery County, No. 81-22360.

Before BROSKY, WIEAND and McEWEN, JJ.

WIEAND, Judge [Entered January 30, 1985]:

This is an appeal from an order denying a petition to strike/open a judgment for $300,000 which was recovered in West Virginia and transferred to Montgomery County, Pennsylvania, pursuant to

the Uniform Enforcement of Foreign Judgments Act.[1] Appellant contends that the West Virginia judgment is not entitled to full faith and credit in Pennsylvania because it was obtained in violation of due process requirements. We disagree and, therefore, affirm the order refusing to strike the judgment. However, we will direct that the judgment be amended to reflect partial satisfaction effected by payments admittedly received in West Virginia.

Stephen and Marilyn Noetzel, husband and wife, brought suit in the Circuit Court of Kanawha County, West Virginia, to recover for personal injuries sustained in an automobile accident on Interstate Route 79 in Kanawha County.

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1. 42 Pa.C.S. § 4306.

Named as defendant was Glasgow, Inc., a Pennsylvania corporation, which had contracted with the West Virginia Department of Highways to perform road work. It was alleged in the Noetzel complaint that Glasgow had negligently erected "Detour" barriers, without proper warning signs, thus causing the Noetzel vehicle to crash. Service of the complaint was effected on June 18, 1979 by making service on the Secretary of State of West Virginia who, pursuant to W.Va.Code § 31-1-15, had been designated attorney-in-fact for foreign corporations. The Secretary of State mailed the complaint to Glasgow's West Virginia agent, C. T. Corporation System, in Charleston, West Virginia. It was there received by W. M. Woodroe, who forwarded it to the C. T. Corporation in Philadelphia. Finally, it was transmitted

to the offices of Glasgow's general counsel. By inadvertence and mistake thereafter occurring, the complaint was not answered; and, on August 13, 1979, a default judgment was entered without further notice to Glasgow. On March 19, 1980, the action was certified for jury trial to determine damages. Again, no notice was given to Glasgow, and the trial to assess damages proceeded ex parte on June 25, 1980. The verdict awarded damages to Stephen Noetzel in the amount of $100,000 and to Marilyn Noetzel in the amount of $200,000.

On February 27, 1981, the Noetzels issued a writ of execution and garnished moneys payable to Glasgow by the West Virginia Department of Highways. Glasgow then learned of the judgment which had been entered against it for the first

time and moved, on March 23, 1981, for relief from the judgment. Its request was denied by the West Virginia court on April 9, 1981. The court held that service had been lawful, that Glasgow had been entitled to no further notice after it had failed to enter an appearance, and that Glasgow had failed to prove fraud in obtaining the judgment. Moreover, the Court held, the averments of Glasgow's motion that default had occurred as a result of inadvertence, mistake, surprise or fraud "were not made within eight (8) months of the entry of the judgment order herein and therefore [pursuant to W.Va.R. Civ.P. 60(b)] cannot be considered as grounds to set aside the...order." No appeal was taken from that order. However, on May 22, 1981, Glasgow filed a petition for writ of prohibition in the Supreme

Court of Appeals of West Virginia seeking to prohibit further proceedings on the judgment. Relief was denied on June 2, 1981. An attempt to obtain relief in the United States District Court for the Southern District of West Virginia was also unsuccessful. See: Glasgow, Inc. v. Noetzel, 556 F.Supp. 595 (S.D.W.Va. 1983).

As a result of attachment execution issued against the Department of Highways in West Virginia, the Noetzels were able to collect $218,811.54 on account of their judgment. Then, on December 22, 1981, they filed in the Court of Common Pleas of Montgomery County, Pennsylvania, a praecipe for judgment "in the amount of [$300,000] in favor of [p]laintiffs, Stephen S. Noetzel and Marilyn B.

Noetzel pursuant to the Uniform Enforcement of Foreign Judgments Act." The Court of Common Pleas denied a motion to open/strike the judgment thus recorded in Montgomery County, and Glasgow appealed. It contends that "the Noetzels manipulated the procedural rules [in West Virginia] in a manner that deprived Glasgow of its due process rights to notice and an opportunity to be heard" and that "Rule 60(b) of the West Virginia Rules of Civil Procedure is unconstitutional because it provides an absolute bar to relief from judgments entered without notice or hearing by plaintiffs who deliberately conceal the judgments until the limited time for seeking relief ha[s] expired." Because its due process rights were violated, Glasgow contends, the judgment against it is not entitled to full faith and credit and

therefore is not entitled to be accepted or enforced in Pennsylvania pursuant to the Uniform Enforcement of Foreign Judgments Act.

The Uniform Enforcement of Foreign Judgments Act provides:

> (b) Filing and status of foreign judgments.--A copy of any foreign judgment including the docket entries incidental thereto authenticated in accordance with act of Congress or this title may be filed in the office of the clerk of any court of common pleas of this Commonwealth. The clerk shall treat the foreign judgment in the same manner as a judgment of any court of common pleas of this Commonwealth. A judgment so filed shall be a lien as of the date of filing and shall have the same effect and be subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of any court of common pleas of this Commonwealth and may be enforced or satisfied in like manner.

42 Pa.C.S. § 4306(b). A "foreign judgment" is defined in the Act as "any judgment, decree, or order of a court of the United States or of any other court requiring the payment of money which is entitled to full faith and credit in this Commonwealth." 42 Pa.C.S. § 4306(f).

A foreign judgment is entitled to full faith and credit in Pennsylvania so long as "there was jurisdiction by the court which originally awarded the judgment, see Stambaugh v. Stambaugh, 458 Pa. 147, 329 A.2d 483 (1974), and the defendant had an opportunity to appear and defend, see Morris Lapidus Associates v. Airportels, Inc., 240 Pa.Super. 80, 361 A.2d 660 (1976)." Everson v. Everson, 494 Pa. 348, 361, 431 A.2d 889, 895-896 (1981). The courts in Pennsylvania will refuse to give full faith and credit to a

foreign judgment if it was obtained in derogation of a basic, due process right of the defendant. Hanson v. Denckla, 357 U.S. 235, 255, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958). However, when "the court of another state has purported to act on the merits of a case, its jurisdiction to do so and the regularity of its proceedings are presumptively valid." Barnes v. Buck, 464 Pa. 357, 364, 346 A.2d 778, 782 (1975). The party challenging the validity of the judgment, therefore, bears the burden of showing any irregularity in the proceedings. Commonwealth, Department of Transportation v. Granito, 7 Pa.Cmwlth. 123, 127, 452 A.2d 889, 891 (1982).

The first problem which appellant encounters is that a prior request for relief from the default judgment was

made to the court in West Virginia and was denied. The West Virginia court, which clearly had jurisdiction to determine the integrity of its own judgment, upheld the finality of appellees' judgment against appellant in the face of a petition by appellant which challenged its validity. In denying appellant's request for relief, the court found that the judgment had not been fraudulently obtained and that there was neither factual nor legal basis for relief. This determination of the West Virginia court, from which no appeal was taker, is res judicata with respect to the validity of the judgment. When a court of competent jurisdiction has determined a litigated cause on its merits, the judgment entered and not reversed on appeal is, forever and under all circumstances, final and conclusive

as between the parties to the suit and their privies, in respect to every fact which might properly be considered in reaching a judicial determination of the controversy, and in respect to all points of law there adjudged, as those points relate directly to the cause of action in litigation. Bearoff v. Bearoff Bros., Inc., 458 Pa. 494, 498, 327 A.2d 72, 74 (1974); Stevenson v. Silverman, 417 Pa. 187, 191, 208 A.2d 786, 787-788, cert. denied, 382 U.S. 833, 86 S.Ct. 76, 15 L.Ed.2d 76 (1965). A final, valid, judicial determination on the merits by a court of competent jurisdiction bars any future litigation between the same parties on the same cause of action. Id., 417 Pa. at 190, 208, A.2d at 787; Goldstein v. Ahrens, 379 Pa. 330, 108 A.2d 693 (1954).

It bars relitigation of issues raised, as well as arguments which might have been raised. General Accident Fire & Life Assurance Corp. v. Flamini, 299 Pa.Super. 312, 316, 445 A.2d 770, 772 (1982). This doctrine of res judicate is a part of the "national jurisprudence" by virtue of the full faith and credit clause of the federal constitution. Riley v. New York Trust Co., 315 U.S. 343, 349, 62 S.Ct. 608, 612, 86 L.Ed. 885, 891 (1942). It follows that appellant is precluded from attacking the validity of the West Virginia judgment a second time in the courts of Pennsylvania. Indeed, it was in part because of principles of res judicata that the federal court refused to consider appellant's request for relief in that court. Glasgow, Inc. v. Noetzel, supra.

Appellant contends that because of the eight month statute of limitations provided in West Virginia Rule 60(b), infra, it was foreclosed from arguing the merits of its claim that the judgment was invalid because of the unconstitutionality of West Virginia's procedural rules. There is no merit in this contention. Rule 60(b)'s eight month limitation period applies only to attacks on the judgment for reasons of mistake, inadvertence, surprise, fraud and things of that nature. A judgment debtor is not precluded by the limitation period from attacking a judgment which is void. W.Va.R.Civ.P. 60(b)(4). "Embraced within the ambit of Rule 60(b)(4) are those judgments which are void by reason of a lack of due process. Glasgow could thus have raised its constitutional claim in the

courts of West Virginia when it sought relief from the default judgment there." Glasgow, Inc. v. Noetzel, supra at 599 (citation omitted). Appellant is barred by principles of res judicata from raising this claim not only in the federal courts but also in the courts of Pennsylvania.

Appellant's challenge to the monetary judgment on due process grounds is also lacking in substantive merit. That the courts of West Virginia had in personam jurisdiction over appellant is clear. Appellant was properly served with a copy of the initial complaint, and notice of appellees' action was received. Although conceding the court's in personam jurisdiction, appellant argues that due process was violated by West Virginia procedure which permitted the entry of a

default judgment and a hearing to determine damages without additional notice and an opportunity to be heard. This procedure when coupled with an eight months' limitation on the right to petition to open the default judgment, Glasgow contends, was offensive to due process.

W.Va.R.Civ.P. 5(a) provides, in part, as follows:

> No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

W.Va.R.Civ.P. 60(b) provides, in part, as follows:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

> (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), (3) and (6) not more than eight months after the judgment, order, or proceeding was entered or taken.

(Emphasis added). Appellees waited until more than seven months had elapsed following the entry of the default judgment. They then asked for a hearing to determine the amount of damages sustained in order

to give monetary significance to their judgment. This hearing was held more than eight months after the entry of default judgment and without notice to Glasgow, pursuant to W.Va.R.Civ.P. 5(a). We are not called upon to review the wisdom of procedural rules which permit such a result.[2] We must determine only whether the procedure established by rule in West Virginia violated rudimentary principles of due process. See: Everson v. Everson, 264 Pa.Super. 563, 574, 400 A.2d 887, 893 (1979), aff'd as modified, 494 Pa. 348, 431 A.2d 889 (1981).

Notice, the most basic requirement of due process, must "be reasonably calculated to inform interested parties

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2. A similar result could not occur in Pennsylvania. See: Pa.R.C.P. 236, 237.1.

of the pending action, and the information necessary to provide an opportunity to present objections. The form of the notice required depends on what is reasonable, considering the interests at stake and the burdens of providing notice." Pennsylvania Coal Mining Association v. Insurance Department, 471 Pa. 437, 452-453, 370 A.2d 685, 692-693 (1977). See also: Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314-315, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); Stateside Machinery Co. v. Alperin, 591 F.2d 234, 241 (3d Cir. 1979); Celane v. Commonwealth, Insurance Commissioner, 51 Pa. Cmwlth. 633, 635, 415 A.2d 130, 132 (1980). As long as a method of service is reasonably certain to give notice to a defendant that an action is pending against him, the fact that such defendant

fails to receive actual notice does not invalidate service on due process grounds. Stateside Machinery Co. v. Alperin, supra at 241. The substituted service on the West Virginia Secretary of State in this case and his subsequent notification of Glasgow's West Virginia agent was in fact reasonably calculated to inform Glasgow of the action and was adequate to satisfy due process requirements. Moreover, the notice in this case was received in fact by Glasgow's representatives. The failure to act in pursuance thereof was attributable either to inadvertence or carelessness. Due process did not require that Glasgow received repeated notices thereafter. When Glasgow failed to appear in response to initial service, due process did not require that it again be invited to participate in the proceedings. Appellees

were not required to obtain Glasgow's permission to proceed further. Due process did not require notice of appellees' intent to enter a default judgment or of their intent to take procedural steps to reduce their judgment to a monetary amount. When Glasgow failed to evidence interest in defending the action following service of initial process, due process did not require that appellees invite them to join the proceedings thereafter. See: Federal Deposit Insurance Corp. v. Spartan Mining Co., 96 F.R.D. 677 (S.D.W.Va. 1983). See also: Anderson v. Taylorcraft, Inc., 197 F.Supp. 872, 873 (W.D. Pa. 1961) (in absence of appearance defendant was not entitled to notice of nonjury trial).

Similarly, we are unable to perceive constitutional infirmity in Rule

60(b) which, in effect, imposes an eight months' limitation on motions to open default judgments where the default was caused by "mistake, inadvertence, surprise, excusable neglect or unavoidable cause." Subject only to the requirement that the limitation must be reasonable, statutes of limitation pertain to remedies and do not impair fundamental rights. Gravinese v. Johns Manville Corp., 324 Pa. Super. 432, 441, 471 A.2d 1233, 1238 (1984). The West Virginia rule is reasonable.[3] It has a rational and valid

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3. The courts of Pennsylvania have uniformly refused to open default judgments unless a petition to open is filed promptly. See: Ridgid Fire Sprinkler Service, Inc. v. Chaiken, 333 Pa.Super. 213, 218, 482 A.2d 249, 252 (1984); Dodson v. N. John Cunzolo & Associates Architectural Clay Products, Inc., 326 Pa.Super. 283, 288-289, 473 A.2d 1093, 1096 (1984); Bottero v. Great Atlantic & Pacific Tea Co., 316 Pa.Super. 62, 68-70, 462 A.2d 793, 797-798 (1983).

purpose. It provides for the finality of judgments entered by default after a reasonable time for seeking relief has expired. The establishment of a fixed period of limitation was properly a matter within the discretion of the courts of West Virginia. We will not review possible imperfections in this West Virginia procedure. We determine only whether the imperfections are so egregious as to offend due process. We conclude that they are not. The fact that appellees relied upon the West Virginia rule to establish the finality of their judgment and thereafter established the monetary amount of their judgment and pursued execution thereon did not render the period of limitations unreasonable or invalid. If appellees used the rule for their own

purposes, it was appellant's default which made it possible for them to do so.

We conclude, therefore, that the Court of Common Pleas in Montgomery County properly denied appellant's motion to strike the judgment transferred from West Virginia. That judgment was not offensive to due process and was thus entitled to full faith and credit in Pennsylvania. It can properly be enforced by the courts of this Commonwealth pursuant to the Uniform Act.

It is clear, however, that the amount of appellees' judgment is incorrect because of partial satisfaction effected in West Virginia.[4] Appellant's petition

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4. Appellant has argued that the Pennsylvania judgment should be stricken because it combined separate

(Footnote continued on next page)

to open or strike the judgment averred that the sum of $218,811.54 had been realized by garnishment proceedings in West Virginia, and appellees' answer contained an admission that this was correct.

"A judgment should only be stricken if the record reveals a defect on its face....[5] The fact that the judgment was entered was not the mistake and

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(Footnote continued from previous page)

judgments entered in West Virginia in favor of husband and wife. We have rejected this argument. The Pennsylvania judgment is clearly supported by the record in West Virginia, and it is not rendered defective because both judgments were consolidated in a joint proceeding in this state.

5. Appellees' counsel properly certified that the West Virginia judgment remained "unsatisfied." The failure of the certification to reflect a "partial satisfaction" in the amount collected in West Virginia did not render the Pennsylvania judgment susceptible to a motion to strike. Cf. Busy Beaver Building Centers, Inc. v. Tueche, 295 Pa.Super. 504, 442 A.2d 252 (1981).

and thus the entire judgment should not be stricken." B.C.Y., Inc. Equipment Leasing Associates v. Bukovich, 257 Pa. Super. 121, 125, 390 A.2d 276, 278 (1978) (footnote added). However, a court has an inherent power to correct the amount of a judgment and may do so on its own motion. Wilson Laundry Co. v. Joos, 200 Pa. Super. 595, 601, 189 A.2d 917, 920 (1963). Under the circumstances of this case, we will remand to the trial court to enter an order amending the judgment to reflect the partial satisfaction effected in West Virginia.

Remanded with directions to amend the judgment by reducing it according to the partial satisfaction admittedly effected in West Virginia. The order refusing to strike or open the judgment is

otherwise affirmed. Jurisdiction is not retained.

THE SUPREME COURT ORDER.

[Letterhead of the Prothonotary of the Supreme Court of Pennsylvania.]

November 21, 1985

Edward W. Mullinix, Esquire
Suite 3600, 1600 Market Street
Philadelphia, PA 19103

Re: STEPHEN S. NOETZEL and MARILYN B. NOETZEL, his wife v. GLASGOW, INC., Petitioner
No. 386 E.D. Allocatur Docket 1985

Dear Mr. Mullinix:

This is to advise you that the following Order has been endorsed on your Petition for Allowance of Appeal, filed in the above captioned matter:

"November 18, 1985.
Petition Denied.
Per Curiam."

Very truly yours,

/s/ Patrick Tassos
PATRICK TASSOS
Deputy Prothonotary

/pj
cc: J. Michael Sheridan, Esquire